

GRIEVANCE PROCEDURE OF THE CITY OF WICHITA HOUSING AUTHORITY PUBLIC HOUSING

I. PURPOSE AND SCOPE

To set forth the requirements, standards and criteria to assure that a tenant is afforded an opportunity for a hearing if the resident disputes within a reasonable time any Housing action, or failure to act, involving the resident's lease with the Wichita Housing Authority or Wichita Housing Authority regulations; which adversely affect the individual resident's rights, duties, welfare or status.

This grievance procedure is incorporated into the lease by reference thereto, and is, therefore, binding upon both the resident and the Wichita Housing Authority.

The Wichita Housing Authority shall provide at least thirty (30) days notice to residents and the residents organization setting forth proposed changes in the Wichita Housing Authority grievance procedure, and providing an opportunity to present written comments. Comments shall be considered by the Wichita Housing Authority before adoption of any grievance procedure changes by the Wichita Housing Authority.

The Wichita Housing Authority shall furnish a copy of the grievance procedures to each resident and to the resident organization.

II. APPLICABILITY

This grievance procedure is applicable to all individual grievances between the resident and the Wichita Housing Authority, as defined herein.

It is not applicable to:

- (a) Disputes between residents not involving the Wichita Housing Authority;
- (b) Class grievances;
- (c) Desires of residents to initiate or negotiate policy changes between a group or groups of residents and the Wichita Housing Authority, or
- (d) Any grievance concerning an eviction or termination of tenancy based upon;
 - 1. Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the Wichita Housing Authority's premises for other residents or employees of the Wichita Housing Authority.

2. Any drug-related criminal activity on or near Wichita Housing Authority property.

III. DEFINITIONS

- (a) **“GRIEVANCE”** shall mean any dispute which a resident may have with respect to Wichita Housing Authority action or failure to act in accordance with the individual resident’s lease, or Wichita Housing Authority regulations which adversely affect resident’s rights, welfare or status.
- (b) **“COMPLAINANT”** shall mean any tenant whose grievance is presented to the Wichita Housing Authority.
- (c) **“ELEMENTS OF DUE PROCESS”** shall mean an eviction or termination of tenancy in a state or local court in which the following procedural safeguards are required.
 - (1) Thirty (30) days notice to the resident of the grounds for termination of tenancy and for eviction; such notice to be effective on the date received by the resident and ending thirty (30) days from such date.
 - (2) Right of the resident to be represented by counsel.
 - (3) Opportunity for the resident to refute the evidence presented by the Wichita Housing Authority, including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defenses which the resident may have.
- (d) **“HEARING OFFICER”** shall mean person selected, in accordance with the provisions herein provided, to hear grievances and render a decision thereto.
- (e) **“RESIDENT”** shall mean the adult or persons (other than live-in-aides);
 - (1) Who resides in the unit, and who executed the lease with the Wichita Housing Authority as lessee of the dwelling unit, or, if no such person now resides in the dwelling unit;
 - (2) Who resides in the unit, and who is the remaining head of household of the resident family residing in the dwelling unit.
- (f) **“RESIDENT ORGANIZATION”** includes a resident management corporation.

IV. INFORMAL SETTLEMENT OF GRIEVANCE IN A PRIVATE CONFERENCE

Any grievance shall be presented by the resident within five (5) days either orally or in writing, to the office of the Wichita Housing Authority so that the grievance may be discussed informally in an attempt to settle without a hearing. A summary of such decision shall be prepared within two working days. One copy shall be given to the resident and one copy shall be retained in the Wichita Housing Authority resident file. The summary shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and shall specify the procedures by which a hearing, under this procedure, may be obtained if the complainant is not satisfied.

V. PROCEDURES TO OBTAIN A FORMAL HEARING

The complainant shall submit a written request for a formal hearing to the Property Management Supervisor at the office of the Wichita Housing Authority within five (5) days after receipt of the summary of the Private Conference. The written request shall specify the reasons for the grievance and the action or relief sought.

IV. SELECTION OF HEARING OFFICER

A hearing officer shall be an impartial, disinterested person selected by the Wichita Housing Authority, other than the person who made or approved the Wichita Housing Authority action under review or subordinate of such person.

VII. FAILURE TO REQUEST A HEARING

If the complainant does not request a hearing in accordance with the procedures contained herein, the disposition made of the grievance by the Wichita Housing Authority is final; except, that failure to request a hearing does not constitute a waiver by the complainant of the right to contest such action in an appropriate judicial proceeding.

VIII. HEARING PREREQUISITE

All grievances shall be personally presented either orally or in writing pursuant to the informal procedure prescribed in **SECTION IV** above; except, that if complainant shows good cause for failure to comply with said **SECTION IV** the provisions of this section may be waived by the hearing officer.

IX. ESCROW DEPOSIT

Before a hearing is scheduled in any grievance involving the amount of rent as defined in the lease which the Wichita Housing Authority claims is due, the complainant shall pay to the management office an amount equal to the amount of the rent claimed due and payable as of the first of the month proceeding the month in which the act or failure to act took place. Complainant thereafter shall deposit the same amount of the monthly rent in an escrow account monthly until the complaint is resolved by decision of the hearing officer.

Provision for payment of rent, as above, may be waived by the Wichita Housing Authority in extenuating circumstances. Unless so waived, failure to make such payments shall result in termination of procedures; except, that such failure of termination of procedures shall not constitute a waiver of any right of the complainant to contest the Wichita Housing Authority's disposition of the grievance in any appropriate judicial proceeding.

X. SCHEDULING OF HEARINGS

Upon complainant's compliance with all the grievance procedures, or upon formal waiver by the Wichita Housing Authority of any of the requirements hereof, which as stated herein may be waived, a hearing shall be scheduled by the hearing officer for a time and place reasonably convenient to both the complainant and the Wichita Housing Authority.

A written notification specifying the time, place, and the proceedings governing the hearing shall be delivered by first class mail or the appropriate Wichita Housing Authority official.

XI. EXCLUSIONS FROM GRIEVANCE PROCEDURE

The Wichita Housing Authority does exclude from this grievance procedure any grievance concerning a termination of tenancy or eviction that involves:

- (a) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the Wichita Housing Authority's premises for other residents or employees of the Wichita Housing Authority.
- (b) Any drug-related criminal activity on or near such premises.

XII. PROCEDURES GOVERNING THE HEARING

The hearing shall be held before the hearing officer. The complainant shall be afforded a fair hearing providing the basic safeguards of due process including:

- (a) The opportunity before the hearing, to examine, and at the expense of the complainants, to copy all documents, records, and regulations, that are directly relevant to the hearing. Any document not made available after request therefore by the complainant may not be relied upon by the Wichita Housing Authority at grievance hearing;
- (b) The right to be represented by counsel or other person chosen as the resident's representative, and to have such person make statements on the resident's behalf;
- (c) The right to a private hearing unless the complainant request a public hearing;
- (d) The right to present evidence and arguments in support of his/her complaint, to controvert evidence relied upon by the Wichita Housing Authority or project management, and to confront and cross-examine all witnesses on whose testimony or information the Wichita Housing Authority or project management

relies; and

- (e) A decision based solely and exclusively upon the facts presented at the grievance hearing.

The hearing officer may render a decision without proceeding with the hearing if the hearing officer determines that the issue has been previously decided in another hearing or proceeding.

If the complainant or the Wichita Housing Authority fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for not to exceed five (5) working days or to make a determination that the party waived his/her right to a hearing. Both the complainant and the Wichita Housing Authority shall not be notified of the determination by the hearing officer provided, that a determination that the complainant has waived his/her right to a hearing shall not constitute a waiver of any right the complainant may have to contest the Wichita Housing Authority disposition of the grievance in an appropriate judicial proceeding.

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the Wichita Housing Authority must sustain the burden of justifying the Housing Authority action or failure to act against which the complainant is directed.

The hearing shall be conducted informally by the hearing officer and oral or documentary evidence pertinent to the facts and issues raised by the complainant may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The hearing officer shall require the Wichita Housing Authority, complainant, counsel and other participant to conduct themselves in an orderly fashion. Failure to comply with the directions of hearing officer to obtain order may result in exclusion from the proceedings or a decision adverse to the interests of the disorderly party granting or denial of relief sought, as appropriate.

The complainant or the Wichita Housing Authority may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.

The Wichita Housing Authority shall provide reasonable accommodations for persons with disabilities to participate in the hearing. Reasonable accommodations may include, but are not limited to: qualified sign language interpreters, readers, accessible locations, or attendants.

If the tenant is visually impaired, any notice to the resident which is required under these procedures shall be in an accessible format, designed to give actual notice.

XIII. DECISION OF THE HEARING OFFICER

The hearing officer shall prepare a written decision, together with the reasons therefore, within ten days after the hearing. A copy of the decision shall be sent to the complainant and the Wichita Housing Authority. The Wichita Housing Authority shall retain a copy of the decision in the resident's folder. A copy of such decision with all names and identifying references deleted, shall be maintained on file by the Wichita Housing Authority and made available for inspection by a prospective complainant, his/her representative, or hearing officer.

The decision of the hearing officer shall be binding on the Wichita Housing Authority which shall take all actions, or refrain from any actions, necessary to carry out the decision unless the Wichita Board of Housing Commission determines within a reasonable time, and promptly notifies the complainant of its determination that:

- (a) The grievance does not concern Wichita Housing Authority action or failure to act in accordance with or involving the complainant's lease or Wichita Housing Authority regulations, which adversely affect the complainant's rights, duties, welfare or status; or
- (b) The decision of the hearing officer is contrary to applicable federal, state or local law, HUD regulations or requirements of the Annual Contribution Contract between HUD and the Wichita Housing Authority.

A decision of the hearing officer or the Wichita Board of Housing Commissioners in favor of the Wichita Housing Authority or which denies the relief requested by the complainant in whole or part, shall not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in this matter.